

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

RESTRICTED

MTN.GNG/NG12/W/15

7 July 1989

Special Distribution

Group of Negotiations on Goods (GATT)

Negotiating Group on Trade-Related
Investment Measures

Original: English

SUBMISSION BY THE UNITED STATES

The attached communication, dated 30 June 1989, has been received from the delegation of the United States with the request that it be circulated to members of the Group.

GATT SECRETARIAT

UR-89-0136

A STRUCTURE FOR NEGOTIATING A
COMPREHENSIVE AGREEMENT ON TRIMS

I. INTRODUCTION

In previous submissions, this delegation and others have examined many different aspects of trade-related investment measures. The Group has considered descriptions of TRIMs, case studies of their use, and the application of traditional trade policy concepts to TRIMs. The Group has also identified the trade restrictive and distorting effects of investment measures, and analyzed the extent to which such effects are covered by existing GATT articles, thereby addressing points (a) and (b) of the work programme endorsed by Ministers at Montreal.

The Group's work to date has revealed much about TRIMs. TRIMs are widely used, and they have adverse effects on trade. TRIMs are often used in an ad hoc, non-transparent and discriminatory manner. Their relationship to the General Agreement is complex. Some TRIMs are clearly inconsistent with GATT provisions; others are not. Some TRIMs are inherently trade distorting (regardless of their legal status vis-à-vis the GATT); others distort trade in some but not all circumstances.

At the May 1989 meeting of the TRIMs Negotiating Group, the Chairman urged participants to make written submissions with respect to any of the five points in the work programme. This submission focuses on point (d) - means of avoiding the identified adverse trade effects of TRIMs, including, as appropriate, new provisions to be elaborated where existing GATT articles may not cover them adequately. It also briefly discusses points (c) and (e), development aspects and other issues relevant to an agreement on TRIMs. It is the United States' view that the proposals set forth in this submission should be used as the basis for drafting a comprehensive GATT agreement on TRIMs.

II. MEANS OF AVOIDING ADVERSE TRADE EFFECTS

A. General considerations

In its most recent submission (MTN.GNG/NG12/W/14 of 6 February 1989), the United States identified three categories of adverse trade effects produced by TRIMs:

- reduction of imports (generally caused by TRIMs which favour domestic products over like imported products or act as a quantitative restriction on imports);
- increase of exports (generally caused by TRIMs which require or induce the investor to export); and
- reduction of exports (generally caused by TRIMs which discourage exports or function as quantitative restrictions on exports).

In accordance with the Group's mandate, the United States believes a GATT agreement on TRIMs should include disciplines adequate to eliminate or

minimize the adverse trade effects of TRIMs and to provide relief from such effects when they occur. In accordance with basic GATT principles, disciplines should also be adequate to ensure that TRIMs do not otherwise nullify or impair the benefits of the General Agreement.

B. Proposed disciplines

As the United States noted in its February 1989 submission, it is established GATT practice to prohibit measures that are inherently trade distorting, such as quantitative restrictions on imports, and to provide other disciplines for measures that, while not inherently trade distorting, do distort trade in certain circumstances.

Accordingly, the United States proposes two categories of discipline for TRIMs:

1. Prohibition, for TRIMs that inherently produce adverse trade effects (in many cases the GATT already prohibits such measures); and
2. Other disciplines for TRIMs that cause adverse trade effects in some but not all circumstances.

In this regard, the United States proposes that a GATT agreement on TRIMs prohibit the use of TRIMs that inherently have adverse trade effects, such as:

1. Reducing imports;
2. Inducing or increasing exports; or
3. Reducing exports.

Regarding the scope of this discipline - i.e., to which TRIMs it would apply - the United States proposes that the Group elaborate an illustrative list of TRIMs that have any or all of the above trade effects.

Prohibitions should apply with respect to both domestic and foreign investors, and regardless of whether they are used in conjunction with incentives.

For TRIMs that are not prohibited, the United States proposes that such measures should be subject to other disciplines, notably:

1. A commitment to use such TRIMs only on a non-discriminatory basis; and
2. A commitment to use such TRIMs only in ways that do not produce adverse trade effects. In the event that such measures do adversely affect other contracting parties, the party imposing the TRIMs would be obligated to stop using such TRIMs or find other ways to avoid producing such effects. If adverse effects persist, affected parties would be permitted to take countermeasures of equivalent commercial effect.

The Group could elaborate an illustrative list of TRIMs for this category of discipline.

III. DEVELOPMENT CONSIDERATIONS

The United States welcomes suggestions from other delegations on how to deal with development considerations in a manner that takes into account both the economic problems of developing countries and the need for effective rules on TRIMs. As a guiding principle, the United States seeks disciplines on TRIMs which apply to all contracting parties, regardless of their level of economic development. In the United States view, a two-tier structure of disciplines or broad, permanent exemptions for developing countries, is bad for the international trading system and contrary to development.

At the same time, the United States recognizes that in certain circumstances developing countries may be unable to implement all disciplines immediately. It might be appropriate to adopt provisions which allow individual developing countries defined, time-limited derogations from certain disciplines.

IV. OTHER RELEVANT ISSUES

At an appropriate time, the Group will also need to consider other issues which would be relevant to an agreement on TRIMs. As a preliminary observation, other relevant issues could include:

A. Transparency

Clear and reliable information about the conditions for investment in contracting parties is necessary for disciplines to be effective. Article X of the GATT sets a standard for transparency by requiring contracting parties: (i) to publish promptly trade laws, regulations, judicial decisions, administrative rulings and international trade agreements; and (ii) to administer trade laws, regulations, etc. in an "impartial and reasonable manner," and to maintain tribunals for this purpose. In the context of TRIMs, there may need to be a higher standard of transparency. Transparency should mean, at a minimum, that governments be required to notify the GATT which TRIMs are provided for in laws, regulations and policies, and to update periodically such notifications. Transparency provisions should also require periodic reports on progress in conforming to agreed-upon disciplines.

B. Enforcement and dispute settlement

If disciplines on TRIMs are to be effective, an agreement must include adequate mechanisms to enforce disciplines and resolve disputes. The Group should thoroughly examine this issue.

C. Transitional arrangements

The effective application of disciplines would involve important adjustments for all parties affected by TRIMs. While it would be premature to decide on transitional arrangements before disciplines have been determined, this issue will require thorough analysis by the Group.